

Office of Chief Counsel
Internal Revenue Service

memorandum

CC:SB:6:[REDACTED]:FILES-166030-01
[REDACTED]

date: DEC 2 0 2001

to: Communications and Government Liaison, [REDACTED]
attn: [REDACTED]

from: Associate Area Counsel (SB/SE)
[REDACTED]

subject: [REDACTED] Inc.; Cash Transaction Reports

On November 5, 2001, we received a copy of a transmittal document from the office of [REDACTED] to your office, with several pages of information attached, regarding a complaint by a taxpayer, [REDACTED] Inc. The complaint involves the processing of, and procedures applicable to, the Form 8300, used to report cash transactions in amounts greater than \$10,000.00, when the person paying cash is a non-citizen and non-resident alien.

ISSUE

The issue raised by the [REDACTED] (filer), is whether something can be done to avoid issuance of correction request or penalty notice correspondence by the Internal Revenue Service (IRS), in response to Forms 8300 which omit taxpayer identification notices because the individual paying cash is a non-citizen and does not have such identification.

DISCUSSION

The facts as presented by filer are as follows. Filer is an automobile dealer doing business in [REDACTED], [REDACTED]. Filer conducts automobile auctions in [REDACTED], which are attended by representatives of automobile dealers in [REDACTED]. The [REDACTED] buyers generally make purchases of cars using cash. Filer files a Form 8300 with respect to each transaction in which it receives more than \$10,000.00 in cash, including those transactions conducted with [REDACTED] buyers.

When filing the Form 8300 with respect to a transaction with a [REDACTED] buyer, filer does not provide a taxpayer identification number in box 6 of the form, because the buyer does not have a United States taxpayer identification number. The sample Form 8300 sent by filer with the complaint showed, in Part I, a name, birth date, address in [REDACTED] and, in Box 14, a [REDACTED] driver's license number. Part I of Form 8300 requires information about the person from whom cash was received.

Part II of Form 8300 requires information about the person on whose behalf the transaction was conducted, if that person is separate from the person from whom cash was received. In the sample provided by filer, a separate individual is identified in Part II, by name and address in [REDACTED]. In Box 27 of Part II of the form, where the filer is to describe the "alien identification," taxpayer wrote "Dealer Registration Form," but provided no number.

Pursuant to IRC § 6050I, any person who is engaged in a trade or business and who, in the course of such, receives more than \$10,000.00 in cash in a transaction or series of related transactions, must make a return with respect to the transaction. Pursuant to the IRC § 6050I and Treas. Reg. § 1.6050I-1, filer in this case is clearly required to file a Form 8300 reporting the receipt of cash in excess of the amount of \$10,000.00 in any transaction in its business dealings, whether with citizens or non-citizens of the United States, if the transactions take place within the United States.

IRC § 6721 imposes a penalty of \$50.00 for every information return with respect to which there is a failure to file timely or a failure to include correct and complete information. The taxpayer identification number of a person paying cash in excess of \$10,000.00 is required information, and its omission is never considered inconsequential. However, a filer seeking waiver of the penalty may establish reasonable cause for failure to include a taxpayer identification number. The fact that a person paying cash in excess of \$10,000.00 has no taxpayer identification number is reasonable cause for not providing it.

Treas. Reg. § 6050I-1(e)(1) provides that Form 8300 reports must be filed by the 15th day after the cash transaction. The information that must be included on the

form consists of the name, address, and taxpayer identification number, and the amount, date and nature of the transaction. Treas. Reg. 6050I-1(e)(2). A person making such a return must verify the identification of the person from whom the reportable cash is received. Treas. Reg. § 6050I-1(e)(3). That regulation subsection also provides that verification of the identification of a person who purports to be an alien must be made by examination of a passport, alien identification card or other official document. The instructions for the Form 8300 and Publication 1544 indicate that a reporter is not required to include a taxpayer identification number for a nonresident alien if that person does not have income effectively connected with a United States business and has no place of business or paying agent in the United States.

Filer complains that, in spite of its efforts to make it clear on the Form 8300 that the taxpayer identification number is omitted because the buyer is a non-citizen and does not have a taxpayer identification number, the IRS routinely responds to these Forms 8300 with "Notice of Proposed Penalty Assessment for Late and/or Incomplete Form 8300." A copy of a sample of this correspondence was included with the information provided by filer with the complaint in this case. The notice urges the filer, if they disagree with the proposed assessment, to provide a written explanation of why the penalty should not be imposed, within 20 days of the date of the notice.

We understand that Forms 8300 are electronically processed, and that the current processing programs look for an entry in Box 6 of Part I of the form. If there is no entry there, and Box 14 is not properly filled out, correspondence is automatically generated.

Filer's complaint is that the alternative identification information it provides is not acknowledged or processed by the IRS upon receipt of the Form 8300. Filer complains that responding to the automatically generated notices creates a burden which, in filer's view, is unnecessary, since the matter is resolved on the basis of information already provided on the Form 8300.

The problem raised by the filer here has apparently been raised by others, as well, and is being addressed through the Taxpayer Advocate's National Office, in coordination with the

National Offices of IRS, Legislative Affairs, CI, and Chief Counsel. Mark Ignasiak, Karen McKissack and Ellen White, IRS, Detroit Computing Center, Richard Denmark, IRS, Wage & Investment, Maureen Sanders, IRS, Philadelphia, Nancy Rose, Chief Counsel, Procedures & Administration and Delon Harris, IRS, Taxpayer Advocates Office, have been involved in addressing the problems raised.

The filer's problem in this case does not appear to be a processing problem. As long as Form 8300 is properly completed, there will be no correspondence generated. However, it seems that filer is encountering problems in understanding how to correctly complete Forms 8300 when receiving cash from a non-resident alien. If filer is unable to fill out Box 6 of Part I, because the individual has no taxpayer identification number, taxpayer must properly complete Box 14. A [REDACTED] driver's license number is appropriate identification for purposes of Box 14.

Part II of Form 8300 need not always be completed, but if it is required to provide identification of a second individual, on whose behalf the transaction is conducted, this portion of Form 8300 must also be correctly completed in order to avoid correction correspondence. If the second individual identified in Part II is also a non-resident alien and therefore has no taxpayer identification number to provide in Box 19, Box 27 must contain proper alternative identification, such as a driver's license number, passport number or dealer's license number. In the sample provided by filer, it appears that Box 27 was not properly completed. This would have been the reason for correction correspondence being generated in response to this Form 8300.

Although the IRS has attempted to educate this filer regarding the requirements for properly completing Forms 8300, it appears that further effort is needed.

CONCLUSION

It appears that filer and its employees need further instruction regarding the requirements for proper completion of Form 8300 when cash is received from non-resident aliens. We understand that the IRS is making an effort to provide further direction to filer, in response to the filer's complaint.

If we can provide any assistance to your office in this matter, or if you have any questions, please call Senior Attorney [REDACTED] at [REDACTED]. We are closing our file in this case.

By: [REDACTED]

[REDACTED]
Associate Area Counsel (SB/SE)

CC: Area Counsel
Chief Counsel, Special Counsel
(National Taxpayer Advocate Program) CC:NTA
Associate Chief Counsel
(Procedures and Administration) CC:PA